IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.175 of 2005

Reserved on 30.4.2007

Date of decision 25.5.2007

Uttam Chand Petitioner

Vs.

State of H.P. and others Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ashwani Gupta and Mr.R.D.Kaundal, Advocates.

For the Respondents : Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Deputy Advocate Generals.

Rajiv Sharma, J.

This petition arises out of the Award made by learned Presiding Judge, H.P.Labour Court, Shimla dated 19.7.2004. The brief facts necessary for the adjudication of the petition are that the petitioner was engaged as a daily waged Beldar in Irrigation-cum-Public Health Department in the month of September, 1995 and he worked upto 31.4.1998. The petitioner was retrenched with effect from 1.5.1998.

The petitioner served a demand notice on 3.11.1998 to the Labour Inspector, Mandi with a copy to the employer demanding his reinstatement. On the basis of failure report submitted by the Labour-cum-Conciliation Officer, the Government made following reference to the learned H.P.Labour Court Shimla:

"Whether the termination of services of Shri Uttam Chand, Ex-daily wages Beldar by the Executive Engineer, Irrigation and Public Health

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

Division, Mandi Distinct Mandi (H.P.) w.e.f. 1.5.1998 without any notice, charge sheet, enquiry and without compliance of Section 25-F of the Industrial Disputes Act, 1947 on completion of more than 240 days' continuous service on the principle of "first come last go" by retaining juniors, S/Shri Mohan Singh and Vishwa Nath, is legal and justified. If not to what relief of service benefits and amount of compensation, Sh.Uttam Chand is entitled?"

The case set up by the petitioner workman before the Labour Court was that he had completed 240 days in each twelve calendar months preceding his date of retrenchment i.e. 1.5.1998. The alternative case set up by the petitioner was that the workmen, namely, S/Shri .Mohan Singh, Chimna Lal and Sh.Vishwanath though juniors to him were retained in service, thus the employer has violated Section 25-G of the Industrial Disputes Act, 1947 (herein after referred to as the 'Act'). The employer had contested the case set out by the petitioner and the employer case before the Labour Court was that the workman had not completed 240 days preceding 12 calendar months form the date of his retrenchment though it was admitted that Sh.Mohan Singh was engaged on 1.1.1997 and Sh.Chimna Lal with effect from 1.6.1996**.** With regard to Sh.Vishwa Nath it was stated that he was engaged on 21.1.1986 and was senior to the petitioner-workman. The Labour Court has answered the reference against the petitioner and in favour of the employer on 19.7.2004.

Mr.Ashwani Gupta, learned counsel appearing for the petitioner workman had argued that his client had completed 240 days preceding the date of his retrenchment and was entitled to the protection of Section 25-N of the Act. The alternative prayer of Mr.Gupta was that if this Court comes to the conclusion that the petitioner has not completed 240 days in that eventuality also the petitioner was entitled to the protection of Section 25-G of the Act since S/Shri .Mohan Singh and .Chimna Lal were juniors to him and were engaged by the employer with effect from 1.1.1997 and 1.6.1996, respectively and the petitioner was engaged with effect from

September,1995. Mr.M.S.Chandel, learned Advocate General had supported the award dated 19.7.2004.

I have learned counsel for the parties and have gone through the record carefully.

It is evident on the basis of man days chart annexed by the respondents No.1, 3 and 4 that the petitioner had only worked for 188 days preceding his date of retrenchment i.e. 1.5.1998. Since the petitioner had not completed 240 days preceding twelve calendar months from the date of his retrenchment he was not entitled to the protection under Section 25-N of the Act. Now this Court has to consider the alternative prayer of Mr.Gupta with regard to violation of Section 25-G of the Act. It is admitted by the employer that Mohan Singh was engaged on 1.1.1997 and Sh.Chimna Lal was engaged w.e.f. 1.6.1997. So far as Sh.Vishwa Nath is concerned, he was engaged with effect from 21.1.1986. Admittedly the petitioner had been engaged with effect from September 1995 and was senior to Sh.Mohan lal as well as Sh.Chimna Lal. In view of this the petitioner was entitled to be retained in service on the principle of last come first go. The petitioner was senior to Sh.Mohan Lal and Sh.Chimna Lal and for invoking Section 25-G of the Act it was not necessary that he had to complete 240 days. The Hon'ble Supreme Court in **Central Bank of India vs. S.Satyam and others**, (1996)5 SCC 419 has held that the provisions of Section 25-G of the Act are not confining only to workmen who were in continuous service for one year and above. Their Lordships of the Supreme Court have held as under:

The plain language of Section 25-H speaks only of re-employment of 'retrenched workmen'. The ordinary meaning of expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in Section 2(oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman… who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein but use of the further words

"workman… who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by section 25-F."

Thus it was not necessary that the workman should have completed 240 days. The fact that S/Shri Mohan Singh and Chmna Lal had completed 240 days though juniors to the petitioner will not make Section 25-G of the Act inapplicable. The Labour Court has over looked this aspect of the matter and was only swayed by the fact that S/Shri Mohan Lal and Chimna Lal had completed 240 days after their engagement. The finding recorded by the Labour Court that the petitioner was not entitled to the protection of Section 25-G of the Act is erroneous and is liable to be interfered with. The petitioner has been retrenched while retaining the juniors violating the provisions of Section 25-G of the Act.

In view of the foregoing discussion, this writ petition is allowed. The award of the Labour Court dated 19.7.2004 is set aside and the petitioner workman is entitled to reinstatement with effect from 1.5.1998. The petitioner is also held entitled to 50% back wages with effect from 1.5.1998 till his re-engagement with continuity in service.

May 25, 2007(g) **(Rajiv Sharma), J.**